

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT						1. CONTRACT ID CODE		PAGE OF PAGES 1   2	
2. AMENDMENT/MODIFICATION NO. <b>0017</b>			3. EFFECTIVE DATE <b>07/17/98</b>		4. REQUISITION/PURCHASE REQ. NO. <b>0-8-10-U3-TR-A36</b>		5. PROJECT NO. (If applicable)		
6. ISSUED BY  INTERNAL REVENUE SERVICE A/C (PROCUREMENT) M:P:I:CS 6009 Oxon Hill Road, 7th Floor Oxon Hill, MD 20745			CODE		7. ADMINISTERED BY (If other than Item 6)  CODE				
TO ALL RESPONDING OFFERORS						(T)	9A. AMENDMENT OF SOLICITATION NO.		
						X	TIRNO-98-R-00003		
							9B. DATED (SEE ITEM 11)  October 23, 1997		
							10A. MODIFICATION OF CONTRACT/ORDER NO.  10B. DATED (SEE ITEM 13)		
CODE FACILITY CODE									
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS									
<input checked="" type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers <input checked="" type="checkbox"/> is extended, _____ is not extended.  Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  (a) By completing Items 8 and 15, and returning <u>  1  </u> copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.									
12. ACCOUNTING AND APPROPRIATION DATA (If required)									
13. THIS ITEM APPLIES TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.									
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.									
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office, appropriation data, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b)									
C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:									
D. OTHER (Specify type of modification and authority)									
E. IMPORTANT: Contractor _____ is not, <u>  </u> is required to sign this document and return _____ copies to the issuing office.									
14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  See Page 2.  Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect.									
15A. NAME AND TITLE OF SIGNER (Type or print)					16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)				
15B. CONTRACTOR/OFFEROR  _____ (Signature of person authorized to sign)			15C. DATE SIGNED		16B. UNITED STATES OF AMERICA  BY _____ (Signature of Contracting Officer)			16C. DATE SIGNED	
NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE					STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53.243				

Solicitation No. TIRNO-98-R-00003 dated October 23, 1997 is hereby amended as follows:

1. Revised proposals submitted in response to this amendment are due no later than August 3, 1998, 2:00 P.M. NOTE: Offerors will have an opportunity to submit written questions regarding this amendment and the questions and answers dated July 17, 1998 to this office by no later than July 23, 1998, 5:00 P.M.
2. The below referenced pages are hereby revised and incorporated into solicitation No. TIRNO-98-R-00003:
  - a. Pages B-7, C-15a, C-16, C-24, C-25, C-26, E-2, E-31, E-31a, E-31b, E-31c, E-31d, E-32, E-37, and E-39. These pages are hereby replaced in their entirety with the attached corresponding numbered replacement pages.
  - b. Pages C-25a, C-25b and E-41 are hereby inserted and shall be incorporated within the solicitation.

**B.2. CONTRACT TYPE**

This is an INDEFINITE DELIVERY, INDEFINITE QUANTITY (IDIQ) CONTRACT with FIRM FIXED PRICES (see "Indefinite Quantity" Section C.4.2.3.) for the supplies and services identified and described in Section B - Exhibit of Contract Line Item Numbers (CLINs). Orders may be placed by authorized Ordering/Contracting Officers throughout the U. S. Department of the Treasury.

**B.3. CONTRACT PRICING**

(a) Each item/product assigned a CLIN may be ordered alone or in any combination with other CLINs, subject to the Order Limitations clause (Section C.4.2.2.). Products listed as part of a CLIN end-product (i.e., Sub-CLINs) shall be separately priced for evaluation purposes only. The purpose of breaking down CLIN Nos. 0001-0006, 0018-0021, 0025, 0026, 0029 and 0040-0043 into sub-CLINs is to ensure that all end products are manufactured in designated or eligible countries or so the Government can apply required differentials, if necessary, in accordance with the Buy American Act, Balance of Payments Program and other associated trade agreement acts. In the CLIN Breakout Tables, the CLINs and sub-CLINs that have an asterisk beside them (CLIN/Sub-CLIN Nos. 0006AD, 0006AE, 0008, 0026AA, 0041AC, 0045, 0047 and 0061) are subject to the Balance of Payments Program based on the Government Cost Estimate. Depending on the country of origin each end product is from will determine if the Buy American Act or Balance of Payments Program differential is applied. Each item assigned a CLIN will have a firm-fixed unit price which will apply to delivery orders made by the Government during one or more one-year periods throughout the potential maximum two-year contract period. At the time of contract award, ordering will take place at the CLIN level only.

(b) Section B and the CLIN tables state the latest software versions/releases available to the public at the time the RFP was written. The Government requires the latest (most recent) Commercial-Off-The-Shelf (COTS) version/release available from the original software manufacturer at the time of contract award. For example, if at contract award, CrossTalk version 9.14 is the most recent release and is available from the original software manufacturer, version 9.14 shall be provided, and version 9.13 (and prior versions) will not be acceptable. In other words, if a software manufacturer offers a new version/release of the software package after the Contractor submits a proposal, but before contract award, the Contractor selected for contract award must provide the new version/release of the software package to the Government at the price proposed for the previous version. Contractors shall include COTS software version/release number information when completing the Product Technical Requirements Matrices (see Section D, Attachment 4). There shall be no additional charges/costs for delivery, installation of software, manuals or any other items not specifically priced in Section B CLINS.

(c) RESERVED

- ☒ (6) 52.222-26, Equal Opportunity (E.O. 11246).
- ☒ (7) 52.222-35, Affirmative Action for Special Disabled and Vietnam Era Veterans (38 U.S.C. 4212).
- ☒ (8) 52.222-36, Affirmative Action for Handicapped Workers (29 U.S.C. 793).
- ☒ (9) 52.222-37, Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era (38 U.S.C. 4212).
- ☒ (10) 52.225-3, Buy American Act-Supplies (41 U.S.C. 10).  
(This applies to the Small Business Set-Aside competitive portion only. This clause can be found in full text in Section C.4.2.7)
- ☒ (11) 52.225-9, Buy American Act-Trade Agreements Act-Balance of Payments Program (41 U.S.C. 10, 19 U.S.C. 2501-2582).  
(This applies to the Full and Open competitive portion only. This clause can be found in full text in Section C.4.2.5)

[FAR Clause 52.212-5 is continued on Page C-16.]

[Next page is C-16.]

\_\_\_\_(12) Reserved.

\_\_\_\_(13) 52.225-18, European Union Sanction for End Products (E.O. 12849).

\_\_\_\_(14) 52.225-19, European Union Sanction for Services (E.O. 12849).

\_\_X\_\_(15)(i) 52.225-21, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program (41 U.S.C 10, Pub. L. 103-187). (This applies to the Full and Open competitive portion only. This clause can be found in full text in Section C.4.2.6) |

\_\_X\_\_(ii) Alternate I of 52.225-21. (This applies to the Full and Open competitive portion only. It can be found in full text in Section C.4.2.6) |

\_\_X\_\_(16) 52.239-1, Privacy or Security Safeguards (5 U.S.C. 552a).

\_\_\_\_(17) 52.247-64, Preference for Privately Owned U.S.- Flag Commercial Vessels (46 U.S.C. 1241).

(c) The Contractor agrees to comply with the FAR clauses in this paragraph (c), applicable to commercial services, which the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or executive orders applicable to acquisitions of commercial items or components:

(Contracting Officer check as appropriate.)

\_\_\_\_(1) 52.222-41, Service Contract Act of 1965, As amended (41 U.S.C. 351, et seq.).

\_\_\_\_(2) 52.222-42, Statement of Equivalent Rates for Federal Hires (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_(3) 52.222-43, Fair Labor Standards Act and Service Contract Act-Price Adjustment Multiple Year and Option Contracts) (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_(4) 52.222-44, Fair Labor Standards Act and Service Contract Act-Price Adjustment (29 U.S.C. 206 and 41 U.S.C. 351, et seq.).

\_\_\_\_(5) 52.222-47, SCA Minimum Wages and Fringe Benefits Applicable to Successor Contract Pursuant to Predecessor Contractor Collective Bargaining Agreement (CBA) (41 U.S.C. 351, et seq.).

(d) Comptroller General Examination of Record. The Contractor agrees to comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records--Negotiation.

**C.4.2.6. BUY AMERICAN ACT - NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT - BALANCE OF PAYMENTS PROGRAM - FAR 52.225-21 (JAN 1997)** [This clause only applies to the Full and Open competitive portion.]

(a) *Definitions.* As used in the clause -

“Components” means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

“End products,” means those articles, materials, and supplies to be acquired under this contract for public use.

“Foreign end product,” means an end product other than a domestic end product.

“North American Free Trade Agreement” (NAFTA) country means Canada or Mexico.

“NAFTA country end product,” means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

(b) This clause implements the Buy American Act (41 U.S.C. 10), the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as NAFTA country end products.

(c) The Contracting Officer has determined that the NAFTA applies to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program Certificate." An offer certifying that a NAFTA country end product will be supplied requires the Contractor to supply a NAFTA country end product or, at the Contractor's option, a domestic end product.

(End of clause)

[NOTE: The use of Alternate I is for acquisition value/CLIN value between \$25,000 and \$50,000.]

Alternate I (Jan 1997). As prescribed in 25.408(a)(4), add the following definition to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

"Canadian end product" means an article that (1) is wholly the growth, product, or manufacture of Canada, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply; provided, that the value of those incidental services does not exceed that of the product itself.

\* \* \* \* \*

(c) The Contracting Officer has determined that NAFTA applies to this acquisition. Unless otherwise specified, NAFTA applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act -- North American Free Trade Agreement Implementation Act -- Balance of Payments Program Certificate." An offeror certifying that a Canadian end product will be supplied requires the Contractor to supply a Canadian end product or, at the Contractor's option, a domestic end product.

(End of clause)

**C.4.2.7. BUY AMERICAN ACT -SUPPLIES - FAR 52.225-3 (JAN 1994)** [This clause only applies to the Small Business Set-Aside competitive portion.]

(a) The Buy American Act (41 U.S.C. 10) provides that the government give preference to domestic end products.

“Components,” as used in this clause, means those articles, materials, and supplies incorporated directly into the end products.

“Domestic end product,” as used in this clause, means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as the products referred to in subparagraphs (b)(2) or (3) of this clause shall be treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“End products,” as used in this clause, means those articles, materials, and supplies to be acquired for public use under this contract.

(b) The Contractor shall deliver only domestic end products, except those --

(1) For use outside the United States;

(2) That the government determines are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;

(3) For which the agency determines that domestic preference would be inconsistent with the public interest; or

(4) For which the agency determines the cost to be unreasonable (see FAR 25.105).



**C.4.2.8. BALANCE OF PAYMENTS PROGRAM - FAR 52.225-7 (APR 1984)** [This clause only applies to the Small Business Set-Aside competitive portion.]

(a) This clause implements the Balance of Payments Program by providing a preference for domestic end products or services over foreign end products or services.

“Components,” as used in this clause, means those articles, materials, and supplies directly incorporated into the end products.

“Domestic end product,” as used in this clause, means --

(1) An unmanufactured end product mined or produced in the United States; or

(2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in the United States in sufficient reasonably available commercial quantities of a satisfactory quality shall be treated as domestic. Components of unknown origin shall be considered foreign. Scrap generated, collected, and prepared for processing in the United States is considered domestic.

“Domestic services,” as used in this clause, means services performed in the United States. If services provided under a single contract are performed both in and outside the United States, they shall be considered domestic if 25 percent or less of their total cost is attributable to services (including incidental supplies used in connection with these services) performed outside the United States.

“End product,” as used in this clause, means an article, material, or supply acquired for public use under this contract.

“Foreign end product,” as used in this clause, means a product other than a domestic end product.

(b) The contractor agrees that there will be delivered under this contract only domestic end products or services unless, in its offer, it specified delivery of foreign end products or services in the provision entitled “Balance of Payments Program Certificate.” An offer based on supplying a foreign end product or service, if accepted, will permit the contractor to supply a product or service without regard to the requirements of this clause.

(c) Offers will be evaluated in accordance with paragraph 25.303(b) of the Federal Acquisition Regulation.

**C.4.2.9. ORDERS UNDER MULTIPLE AWARD CONTRACTS (FAR 16.505(b))** |

(1) Except as provided for in paragraph (b)(2) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee shall be provided a fair opportunity to be considered for each order in excess of \$2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, Contracting Officers shall exercise broad discretion. The Contracting Officer in making decisions in the award of any individual task order, should consider factors such as past performance on earlier tasks under the multiple award contract, quality of deliverables, cost control, price, cost, or other factors that the Contracting Officer believes are relevant to the award of a task order to an awardee under the contract. In evaluating past performance on individual orders, the procedural requirements in Subpart 42.15 are not mandatory. The procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order must be set forth in the solicitation and contract. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of Part 6. However, agencies shall not use any method (such as allocation) that would not result in fair consideration being given to all awardees prior to placing each order. Formal evaluation plans or scoring of quotes or offers are not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the Contracting Officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the Contracting Officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(2) Awardees need not be given an opportunity to be considered for a particular order in excess of \$2,500 under multiple delivery order contracts or multiple task order contracts if the Contracting Officer determines that -

(i) The agency need for such supplies or services is of such urgency that providing such opportunity would result in unacceptable delays;

(ii) Only one such contractor is capable of providing such supplies or services required at the level of quality required because the supplies or services ordered are unique or highly specialized;

(iii) The order should be issued on a sole-source basis in the interest of economy and efficiency as a logical follow-on to an order already issued under the contract, provided that all awardees were given a fair opportunity to be considered for the original order; or

(iv) It is necessary to place an order to satisfy a minimum guarantee.

(3) The “competing independently” requirement of 15.804-1(b)(1) is satisfied for orders placed under multiple delivery order contracts or multiple task order contracts when -

- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm through September 30, 1998. |

(d) Product samples. Not applicable.

(e) Multiple offers. Not applicable.

(f) Late offers. Offers or modifications of offers received at the address specified for the receipt of offers after the exact time specified for receipt of offers will not be considered.

(g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) Multiple awards. The Government at its discretion may award approximately one or more (maximum of 2) contract(s) for the full and open competition and one contract for the small business set-aside segment as a result of this solicitation. This does not, however, commit the Government to making award of a contract to any specific number of Offerors. However, it is not the Government's intent to award more than three (3) contracts.

(i) Availability of requirements documents cited in the solicitation. (1) The Index of Federal Specifications, Standards and Commercial Item Descriptions and the documents listed in it may be obtained from the:

(5) Comparison of proposed prices with independent Government price estimates;

(c) If an offer is materially or mathematically unbalanced it will be rejected. Such a proposal would have price features such as the following:

(1) if it is based on prices which are significantly less than prices for some contract line items and significantly overstated in relation to prices for others. For example, its prices for the initial contract period are very high while its prices for the contract option period are very low;

(2) unit charges for any item increase as the quantity of the item increases;

(3) discounts decrease with increased quantities; or

(4) prices or discounts for any item depend on the ordering of any other item.

(d) In addition, if an offeror's price proposal is found to have some or all prices that are unreasonably low or unreasonably high, it may be rejected. The Government will examine the data provided in response to E.2.9.2.2., No. 15 and No. 16. The CLIN unit prices offered over the potential two-year contract period will be reviewed and any changes in unit price will be considered to determine whether the offered unit price is significantly lower (or higher) than a catalog price, a market price, and other offerors' prices that are found to be reasonable. The Government understands that offerors base their proposed prices on estimated costs and profit. However, because the Government anticipates receiving adequate price competition, it does not expect to be examining detailed cost and pricing data. Therefore, the relationship of the offered prices to these other prices is considered an indication of price reasonableness.

### **E.3.9. BUY AMERICAN ACT (BAA), TRADE AGREEMENTS ACT (TAA), BALANCE OF PAYMENTS PROGRAM (BOP) AND OTHER RELATED TRADE AGREEMENTS FOR THE *FULL AND OPEN COMPETITION* - NOTICE AND EVALUATION PROCEDURES**

(a) The evaluation of the Buy American Act and other related trade agreements will be applied on an item-by-item basis. Each individual item in and of itself qualified as an end product. Individual hardware items will not be combined into a system to be evaluated as an end product. This notwithstanding, an award will be made on an all or none basis.

(b) The general rule is that the U.S. Government buys domestic products as required by the Buy American Act (BAA), 41 U.S.C. §§ 10a-10d, and as implemented by Executive Order No. 10582. The BAA accords a preference to firms offering "domestic end products" for purchase on Government supply contracts. The BAA and the Executive Order are implemented by the FAR Part 25 which requires the inclusion of clauses/provisions FAR 52.225-8, 52.225-9, 52.225-21, 52.212-3(f) and (g). If the product proposed is a domestic end product, the BAA will not apply as described below.

(c) However, several international trade agreements have resulted in several exceptions for end products which would otherwise not be considered domestic. Among these are the Trade Agreements Act of 1979 (TAA), 19 U.S.C. §§ 2501-2582, and other statutes implementing similar trade agreements, such as the North American Free Trade Agreement (NAFTA) Implementation Act, and the U.S.–Israel Free Trade Area Agreement (IFTAA). The applicability of these trade agreements is determined by determining which of the solicitation's items are end products subject to the agreements and then ascertaining the Government cost estimate for that end product, including all options. If the cost estimate for an end product is not over the threshold for the applicability of one of the agreements, then it is not subject to the agreement's exception and the requirement to acquire a domestic product will apply. However, if an end product is over the threshold for the application of one of the agreements, and is manufactured in a country which is a signatory nation to that trade agreement with the United States, the end product will be considered "domestic" for evaluation purposes. Therefore, the BAA will not apply.

(d) In order for the Buy American Act to apply to end products contained in a solicitation, it is not necessary for the clause at FAR 52.225-3 to be included in the solicitation. Conversely, its elimination, as was accomplished in Amendment No. 0004 does not mean that the Buy American Act does not apply to at least some of the end items listed in the Schedule. Indeed, by its own terms, the clauses in Section C.3, FAR 52.225-9, Buy American Act-Trade Agreements Act-Balance of Payments Program and FAR 52.225-21, Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program of the contract, applies the BAA and its price differential calculations to all end products that are not manufactured in the United States or a designated country as listed in FAR 25.401. The practical effect is that for the bulk of the CLINs listed in the Schedule, the TAA will apply.

(e) However, for the end products identified in the table entitled "CLIN Breakout Table", whose Government cost estimates are below the TAA threshold, either the BAA, BOP or one of the other trade agreements acts will apply. The TAA is applied as follows:

1. End products manufactured in designated countries totaling \$190,000 or above will not be subject to the BAA provisions. End products manufactured in designated countries and eligible products below \$190,000, will be subject to the BAA provisions except when either the U.S.–Israel Free Trade Agreement or NAFTA apply.
2. If Israeli end products are proposed, the BAA will not apply if they are valued at \$50,000 or above. If these end products are valued below \$50,000, the BAA will apply.
3. If Canadian end products are proposed, the BAA will not apply if they are valued above \$25,000. If these end products are valued at \$25,000 or below, the BAA will apply.
4. If Mexican end products are proposed, the BAA will not apply if they are valued at \$50,000 or above. If these end products are valued below \$50,000, the BAA will apply.

(f) If the BAA applies and, after calculating the price of a proposed foreign end product using the price differentials outlined in the FAR, the foreign end product price is lower than the domestic end product price, there is no prohibition for the Government to acquire the foreign end product. If the TAA applies and an end product that is manufactured in a non-designated or non-eligible country is proposed, the proposal will be deemed unacceptable and the offeror ineligible for award. The Government is prohibited from acquiring end products manufactured in non-designated or non-eligible countries under the TAA.

(g) Additionally, the Balance of Payments Program (BOP) described at FAR 25.3 applies to those end products whose Government cost estimate exceeds the simplified acquisition threshold (\$100,000 for IRS) but is below that for the application of the appropriate trade agreements if the end products will be used outside the United States as defined in FAR 25.101. Like the BAA, it applies without the incorporation of the clause at FAR 52.225-7, by virtue of the fact that the several trade agreements clauses contain the necessary language to make the BOP applicable to those end products not covered by the appropriate trade agreement. Since there are end products that may be used outside the United States, the BOP will apply to such end products from NAFTA countries (Canada and Mexico) and IFTAA (Israel) where the Government cost estimate is at \$100,000.01 - \$189,999.99. The practical effect of this is if the BAA would have applied to those end products, but for the fact that they may be used outside the U.S., the BOP will apply. Therefore:

1. End products whose Government cost estimate is \$190,000 or above, the TAA applies and the end products are exempted from the BOP.

2. End products whose Government cost estimate is at or below \$100,000.00 are exempted from the BOP.

3. End products whose Government cost estimate is \$100,000.00 - \$189,999.99, the BOP applies, except when either the U.S. Israel Free Trade Agreement or NAFTA apply.

(h) Below are the applicable BAA/TAA/NAFTA/BOP contract clause and solicitation provision which are currently incorporated in the RFP :

FAR 52.225-8,	Buy American Act-Trade Agreements-Balance of Payments Program Certificate	
FAR 52.225-9,	Buy American Act-Trade Agreements Act-Balance of Payments Program	
FAR 52.225-21	Buy American Act - North American Free Trade Agreement Implementation Act - Balance of Payments Program and Alternate I	
FAR 52.212-3(f),	Buy American Act-Trade Agreements--Balance of Payments Program Certificate	
FAR 52.212-3(g),	Buy American Act-North American Free Trade Agreement Implementation Act--Balance of Payments Program Certificate	
	Certificate	

**E.3.9.1. BUY AMERICAN ACT (BAA) OR BALANCE OF PAYMENTS PROGRAM (BOP) FOR THE *SMALL BUSINESS SET-ASIDE COMPETITION* - NOTICE AND EVALUATION PROCEDURES**

(a) The evaluation of the Buy American Act will be applied on an item-by-item basis. Each individual item in and of itself qualified as an end product. Individual hardware items will not be combined into a system to be evaluated as an end product. This notwithstanding, an award will be made on an all or none basis.

(b) The general rule is that the U.S. Government buys domestic products as required by the Buy American Act (BAA), 41 U.S.C. §§ 10a-10d, and as implemented by Executive Order No. 10582. The BAA accords a preference to firms offering “domestic end products” for purchase on Government supply contracts. The BAA and the Executive Order are implemented by the FAR Part 25 which requires the inclusion of clauses FAR 52.225-3 and 52.225-7.

(c) However, several international trade agreements have resulted in several exceptions for end products which would otherwise not be considered domestic. Among these are the statutes implementing trade agreements, such as the North American Free Trade Agreement (NAFTA) Implementation Act, U.S.–Israel Free Area Trade Agreement (IFTAA) and Balance of Payments Program. The applicability of these trade agreements is determined by determining which of the solicitation’s items are end products subject to the agreements and then ascertaining the Government cost estimate for that end product, including all options. If the cost estimate for an end product is not over the threshold for the applicability of one of the agreements, then it is not subject to the agreement’s exception and the requirement to acquire a domestic product will apply. However, if an end product is over the threshold for the application of one of the agreements, and is manufactured in a country which is a signatory nation to that trade agreement with the United States, the end product will be considered “domestic” for evaluation purposes. Therefore, the BAA will not apply.

(d) The clauses in Section C.3, FAR 52.225-3, Buy American Act - Supplies and 52.225-7, Balance of Payments Program of the contract, applies the BAA or BOP and its price differential calculations to all end products that are not manufactured in the United States.

(e) All of the end products identified in the table entitled “CLIN Breakout” are subject to the BAA or BOP. The acts/agreements will be applied as follows:

1. All end products will be subject to the BAA or BOP provisions except when either the U.S.–Israel Free Trade Area Agreement or NAFTA apply.
2. If Israeli end products are proposed, the BAA will not apply if they are valued at \$50,000 or above. If these end products are valued below \$50,000, the BAA will apply.
3. If Canadian end products are proposed, the BAA will not apply if they are valued above \$25,000. If these end products are valued at \$25,000 or below, the BAA will apply.
4. If Mexican end products are proposed, the BAA will not apply if they are valued at \$50,000 or above. If these end products are valued below \$50,000, the BAA will apply.

(f) If the BAA applies and, after calculating the price of a proposed foreign end product using the price differentials outlined in the FAR, the foreign end product price is lower than the domestic end product price, there is no prohibition for the Government to acquire the foreign end product.

(g) Additionally, the Balance of Payments Program (BOP) described at FAR 25.3 applies to those end products whose Government cost estimate exceeds the simplified acquisition threshold (\$100,000 for IRS) but is below that for the application of the appropriate trade agreements if the end products will be used outside the United States as defined in FAR 25.101. Since there are end products that may be used outside the United States, the BOP will apply to such end products from NAFTA countries (Canada and Mexico) and IFTAA (Israel) where the Government cost estimate is at \$100,000.01 - \$189,999.99. The practical effect of this is if the BAA would have applied to those end products, but for the fact that they may be used outside the U.S., the BOP will apply. Therefore:

1. End products whose Government cost estimate is at or below \$100,000.00 are exempted from the BOP.

2. End products whose Government cost estimate is \$100,000.00 or above, the BOP applies, except when either the U.S. Israel Free Trade Agreement or NAFTA apply.

(h) Below are the applicable BAA or BOP contract clauses and solicitation provisions which are currently incorporated in the RFP :

FAR 52.225-3, Buy American Act - Supplies

FAR 52.225-7, Balance of Payments Program

Supplement to FAR 52.212-3, Buy American Certificate

Supplement to FAR 52.212-3, Balance of Payments Program Certificate



**E.3.10. TOTAL EVALUATED CONTRACT PRICE**

The estimated quantities of each CLIN and sub-CLIN identified in Section B are provided for estimating purposes and are provided to take advantage of quantity discounts the offeror may provide which would be reflected in the offerors' firm fixed unit prices proposed. The evaluation will be based on 100% of the quantities listed in Section D-4 of the RFP. The offerors' proposed fixed unit prices will be multiplied by the quantities provided by the Government to arrive at a CLIN and sub-CLIN extended price. The CLIN and sub-CLIN extended prices will be adjusted for the application of the Buy American Act, Balance of Payments Program and other related trade agreement acts, as applicable. Because of the likelihood of technology enhancement (See Section C.2.11., Engineering Changes), the Government will place greater reliance on the first year proposed prices versus the second year prices. Therefore, the extended and adjusted BAA/BOP prices, will be factored with the .80 for the first year and .20 for the second year. This factored price will be referred to as the total evaluated price. The basis for contract award will be determined by:

- a. The offeror that is responsible as defined in FAR Subpart 9.1;
- b. technically acceptable proposal which meets all of the mandatory requirements of the RFP;
- c. the offeror that meets the restrictions of the BAA/TAA/BOP; and
- d. the offeror, whose total evaluated price is the lowest, reasonable, balanced price for both years.

[NOTE: The actual contract prices established within the contract shall be based on the total proposed prices minus the BAA/BOP differentials.]

**E.3.11. SUBMISSION OF OFFERS AND PARTICIPATION BY COMPETING COMPANIES IN TDA-3**

(a) Companies that are determined to meet the criteria to be a small business concern may submit an offer to participate as a prime contractor on only one portion for TDA-3, either the full and open portion or the small business set-aside portion. In the event the Government receives an offer from the same small business firm on both portions, its proposal in response to the full and open portion will be rejected.

(b) Companies that are a large business will be submitting an offer in response to the full and open competition. In doing so, they may not also participate as a subcontractor in a Contractor team arrangement (see FAR 9.601(b)) on the portion for the small business set-aside portion, in which they would be responsible for the manufacture, assembly, integration, or resale of CLIN end-products and their total subcontract, for the potential two-year period, would be more than 35% of the total price offered by the small business set-aside "prime contractor". In the event the Government receives an offer from a large business firm on the full and open competitive portion and the same firm is included as a team member subcontractor in an offer on the small business set-aside portion, and its total potential subcontract would exceed 35% of the total price offered, its proposal

(2) Previous Contracts and Compliance. The offeror represents that--

(i) It ☐ has, ☐ has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause of this solicitation, the clause originally contained in Section 310 of Executive Order 10925, or the clause contained in Section 201 of Executive Order 11114; and

(ii) It ☐ has, ☐ has not, filed all required compliance reports.

(3) Affirmative Action Compliance. The offeror represents that--

(i) It ☐ has developed and has on file, ☐ has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Subparts 60-1 and 60-2), or

(ii) It ☐ has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$100,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract.

(f) Buy American Act-Trade Agreements-Balance of Payments Program Certificate. (Applies only if FAR clause 52.225-9, Buy American Act-Trade Agreement-Balance of Payments Program, is included in this solicitation.) [Note: This provision applies to the Full and Open competitive portion only.]

(1) The offeror hereby certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act-Trade Agreements-Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

(g)(1) Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate. (Applies only if FAR clause 52.225-21, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program, is included in this solicitation.) [This provision only applies to the Full and Open competitive portion.] |

(i) Each end product being offered, except those listed in paragraph (g)(1)(ii) of this provision is a domestic end product (as defined in the clause entitled Buy American Act--North American Free Trade Agreement Implementation Act -- Balance of Payments Program.”

Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(ii) Excluded End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN
_____	_____
_____	_____

(List as necessary)

(iii) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (g)(1)(ii) of this provision, offerors must identify below those excluded end products that are NAFTA country end products. Products that are not identified below will not be deemed NAFTA country end products. The following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act--North American Free Trade Agreement Implementation Act--Balance of Payments Program":

_____
_____
_____

(Insert line item numbers)

(iv) Offers will be evaluated in accordance with FAR Part 25 of the Federal Acquisition Regulation. In addition, if this solicitation is for supplies for use outside the United States, an evaluation factor of 50 percent will be applied to offers of end products that are not domestic or NAFTA country end products.

**E.4.1 SUPPLEMENT TO FAR 52.212-3, OFFEROR REPRESENTATIONS AND CERTIFICATIONS COMMERCIAL ITEMS**

(i) Buy American Certificate. (Applies only if FAR clause 52.225-3, Buy American Act is included in this solicitation.) [Note: This provision applies to the Small Business Set-Aside competitive portion only.]

The offeror certifies that each end product, except those listed below, is a domestic end product (as defined in the clause entitled "Buy American Act-Supplies") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN
_____	_____
_____	_____

(List as necessary)

(j) Balance of Payments Program Certificate. (Applies only if FAR clause 52.225-7, Balance of Payments Program is included in this solicitation.) [Note: This provision applies to the Small Business Set-Aside competitive portion only.]

The offeror hereby certifies that each end product or service, except the end products or services listed below, is a domestic end product or service (as defined in the clause entitled "Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

EXCLUDED END PRODUCTS	COUNTRY OF ORIGIN
_____	_____
_____	_____
_____	_____

(List as necessary)

(b) For evaluation purposes only, each offer of an end product other than a domestic end product shall be increased by 50 percent. Any domestic end product offer that exceeds such evaluated other end product shall be considered unreasonable in cost or inconsistent with the public interest.